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Error to Circuit Court, Pulaski County.

Action by David Warden against the Norfolk & Western Railway Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

J. C. Wysor, of Pulaski, for plaintiff in error.

E. L. Trinkle, of Wytheville, and *Jno. S. Draper*, of Pulaski, for defendant in error.

PERDUE *v.* STARKEY'S HEIRS.

Sept. 9, 1915.

[86 S. E. 158.]

1. Wills (§ 531*)—Construction—Per Capita Distribution.—A bequest to persons who are living and to children of another who is dead presumptively refers to the children as individuals and not as a class, and the children take the same share per capita with those persons who are living, and the relations between the beneficiaries and the operation of the statute on those relations in case of intestacy do not overcome the presumption that a per capita distribution was intended.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1143, 1144, 1148-1152; Dec. Dig. § 531.* 13 Va.-W. Va. Enc. Dig. 822.]

2. Wills (§ 531*)—Construction—Per Capita Distribution.—A husband and wife executed to a will whereby they made specific legacies, and then gave to persons named and the daughters of another person their estate, "to be equally divided between them." The beneficiaries bore different degrees of relationship to each other and to the husband and wife. Held, that the estate must be divided per capita among the beneficiaries.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1143, 1144, 1148-1152; Dec. Dig. § 531.* 13 Va.-W. Va. Enc. Dig. 821.]

Appeal from Circuit Court, Roanoke County.

Suit between one *Perdue* and *Starkey's* heirs, involving the construction of the joint will of *John C. Starkey* and his wife. There was a decree construing the will, and certain parties appeal. Reversed.

Samuel A. Anderson, of Richmond, and *Jno. P. Lee*, of Rocky Mount, for appellant.

Martin & Chitwood and *Coxe & Cocke*, all of Roanoke, and *E. W. Saunders*, of Rocky Mount, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.